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Westmoreland Side Rests Case

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NEW YORK, Jan. 8—William C. Westmoreland's lawyer rested the retired general's \$120 million libel case against CBS yesterday after placing the network's documentary unit under much the same kind of scrutiny in court as the network put Westmoreland through on television.

NEWS ANALYSIS

Although it will be weeks before the jury makes a decision in this historic trial, Westmoreland's lawyer, Dan M. Burt, clearly has left a dent in the network's armor.

But for all the embarrassment that this trial has caused the network, the legal question remains of whether the general, who faced an uphill courtroom battle as a public

figure trying to prove that his reputation was sullied, has cleared the high hurdles that the nation's libel laws set up for famous persons.

The jury must agree that Westmoreland's lawyer proved first that the 1982 program "The Uncounted Enemy: A Vietnam Deception" was false when it charged that he was part of a conspiracy to suppress higher enemy figures in 1967 in reports to his superiors, including President Lyndon B. Johnson.

Secondly, because Westmoreland's square-jawed face was familiar on the television medium that he is now challenging in court, Burt was required to prove that CBS aired the show with a "reckless disregard" for whether it was true or false.

In a mini-summation of the case today, Burt told the jury that 18 men, many of

whose names dominated the headlines in the Vietnam war era, "risked their reputations and their dignity" to appear in court supporting the general's version of events.

Those men, Burt said, had testified that there was "no suppression, no deception" by Westmoreland.

CBS lawyer David Boies, who appears to share the view of many CBS officials that they have survived Westmoreland's heaviest artillery, argued that the same witnesses have also provided "certain irrefutable, undeniable facts" to support CBS.

After 12 weeks of testimony, perhaps the most crucial evidence for the general came from a declassified

sified document describing a May 19 or May 20, 1967, meeting in Saigon that related directly to the question of whether Westmoreland deceived his superiors.

Telling the jury today that "documents don't lie," Burt reminded them that the memorandum of the meeting, which was attended by Westmoreland's military superior, included this: "The advisability of releasing the information presented on VC [Viet Cong] irregular forces strength at South Vietnam briefing without further refinement was questioned."

What is crucial about that document, according to Burt, is that it proves that Westmoreland and his "military boss"—as the general called Adm. U.S. Grant Sharp, commander of American forces in the Pacific—discussed higher troop figures in at least one meeting.

CBS charged in the broadcast that during May Westmoreland's intelligence chief, Gen. Joseph McChristian, gave him higher troop figures and that Westmoreland refused to pass the intelligence along because it would create a "political bombshell" in Washington and turn many against the war effort.

On the other question of whether Westmoreland informed what he called his "civilian boss," Burt has suggested that the testimony of former ambassador Robert Komer, one of the general's early witnesses and the supervisor of Johnson's "pacification" program in Vietnam, is fundamental.

Komer testified that he also knew about the higher enemy figures. After the briefing, he said, the figures were passed to a "mission council" in South Vietnam where they would automatically move up the civilian line of authority to the White House through then-Ambassador Ellsworth Bunker.

Such testimony from the top of the military command and the Johnson administration is expected to be contested by lower-ranking military and government officials who will take the stand for CBS.

Boies also told the court today that Komer, retired lieutenant general Phillip Davidson, Westmoreland's intelligence chief in late

1967, and Gen. George Godding, head of a Westmoreland delegation to Washington on intelligence figures, all supported CBS on the issue of whether there was a "ceiling" on troop data. He said that instead of calling it a ceiling, they called it a "command position" that could not be changed without Westmoreland's approval.

Moreover, Boies argued that Westmoreland had said on the witness stand that it was his idea to drop two "civilian" categories from the intelligence estimate of enemy troops before it became official.

On another issue, although the CBS broadcast said that there was a "conspiracy" by top military intelligence officials to hide higher enemy troop data, such a conspiracy was denied by at least four of Burt's key witnesses. They included Westmoreland, former Central Intelligence Agency analyst George A. Carver, retired lieutenant general Danny Graham and Davidson.

Burt not only got witnesses to challenge the general thesis of the program; he also presented testimony from those who disputed some seemingly minor details in the broadcast in an apparent effort to undermine its overall credibility.

One surprising moment involved a quote that narrator Mike Wallace attributed to Westmoreland after he had heard the new, higher figures on enemy strength. Westmoreland was supposed to have said: "What am I going to tell the press? What am I going to tell the Congress? What am I going to tell the president?"

One of Burt's witnesses, however, told the jury he recalled Gen. Earle G. Wheeler, then chairman of the joint chiefs of staff, making the comment, not Westmoreland.

In the more than 12 weeks of testimony, Westmoreland's witnesses also have raised questions about how they were interviewed or not interviewed by CBS and about whether their quotes were plucked out of context and televised to more than 9 million viewers on Jan. 23, 1982, when the broadcast aired.

Burt's one witness from CBS, producer George Crile, who is a co-defendant, stood up under tough

questioning from Westmoreland's attorney on a series of possible flaws in the show.

As Burt rested his case today, he closed with a reading from a post-broadcast memo from Crile to co-defendant Mike Wallace, the narrator.

Crile's memo, which gave the jury one of its few hints that there were internal turmoil and recriminations at CBS after the broadcast, said "it was my understanding from the beginning that we were all in this together—that it was different from any other show."

"The documentary they got is the documentary they commissioned," Crile's memo said. Then, Crile criticized his former executive producer, Howard Stringer, now executive vice president for CBS News, for not doing a better job of riding herd on the show.

"As far as I'm concerned everyone did their job on this show, except Howard," he added.

Thus, Burt presented the jury with some of the embarrassing backbiting that went on behind the scenes after the show aired. The question for the jury will be whether such matters show a darker side of human nature or legal proof that CBS did not believe in the show in the first place.

Special correspondent John Kennedy contributed to this report.